

103D CONGRESS  
1ST SESSION

# H. R. 2105

To establish a program to assure nondiscriminatory compliance with all environmental, health and safety laws and to assure equal protection of the public health.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 12, 1993

Mr. LEWIS of Georgia (for himself, Ms. McKINNEY, Mrs. COLLINS of Illinois, Mr. MILLER of California, Mr. TOWNS, Mr. SERRANO, Mr. STOKES, Ms. WATERS, Miss COLLINS of Michigan, Ms. NORTON, Mr. HOCHBRUECKNER, Mr. CLYBURN, Mr. CONYERS, Mr. PETERSON of Minnesota, Mr. EDWARDS of California, Mr. FILNER, Mr. FOGLIETTA, Mr. DELLUMS, Mrs. CLAYTON, Mrs. MINK, Ms. VELÁZQUEZ, Mr. WASHINGTON, Mr. THOMPSON, Ms. PELOSI, Mr. CLAY, and Mr. PAYNE of New Jersey) introduced the following bill; which was referred jointly to the Committees on Energy and Commerce, Public Works and Transportation, Education and Labor, and Agriculture

DECEMBER 17, 1993

Additional sponsors: Mr. COLEMAN, Mr. EVANS, Mr. FROST, Mr. TORRES, Mr. ENGEL, Mr. RANGEL, Ms. ROYBAL-ALLARD, Mr. DIXON, Mr. OWENS, Mr. OLVER, and Mr. WYNN

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## A BILL

To establish a program to assure nondiscriminatory compliance with all environmental, health and safety laws and to assure equal protection of the public health.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2       This Act may be cited as the “Environmental Justice  
3 Act of 1992”.

4 **SEC. 2. PURPOSES AND POLICIES.**

5       The purposes of this Act are—

6           (1) to require the collection of data on environ-  
7       mental health effects so that impacts on different in-  
8       dividuals or groups can be understood;

9           (2) to identify those areas which are subject to  
10      the highest loadings of toxic chemicals, through all  
11      media;

12          (3) to assess the health effects that may be  
13      caused by emissions in those areas of highest  
14      impact;

15          (4) to ensure that groups or individuals residing  
16      within those areas of highest impact have the oppor-  
17      tunity and the resources to participate in the tech-  
18      nical process which will determine the possible exist-  
19      ence of adverse health impacts;

20          (5) to require that actions be taken by author-  
21      ized Federal agencies to curtail those activities  
22      found to be having significant adverse impacts on  
23      human health in those areas of highest impact; and

24          (6) to ensure that significant adverse health im-  
25      pacts that may be associated with environmental pol-

1 lution in the United States are not distributed  
2 inequitably.

3 **TITLE I—IDENTIFICATION OF**  
4 **ENVIRONMENTAL HIGH IM-**  
5 **PACT AREAS**

6 **SEC. 101. DEFINITIONS.**

7 For the purposes of this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-  
9 trator” means the Administrator of the United  
10 States Environmental Protection Agency.

11 (2) ENVIRONMENTAL HIGH IMPACT AREAS.—  
12 The terms “Environmental High Impact Areas” and  
13 “EHIA” mean the 100 counties or appropriate geo-  
14 graphic units with the highest total weight of toxic  
15 chemicals present during the course of the most re-  
16 cent 5-year period for which data is available, as cal-  
17 culated pursuant to section 102.

18 (3) SECRETARY.—The term “Secretary” means  
19 the Secretary of the United States Department of  
20 Health and Human Services.

21 (4) TOXIC CHEMICALS.—The term “toxic  
22 chemicals” includes all substances as defined in sec-  
23 tion 101(14) of the Comprehensive Environmental  
24 Response, Compensation, and Liability Act of 1980;  
25 any hazardous waste listed or identified pursuant to

1 the Solid Waste Disposal Act; any pollutant for  
2 which air quality standards have been issued pursu-  
3 ant to the Clean Air Act; any pollutant for which  
4 water quality standards have been issued pursuant  
5 to the Clean Water Act; all materials registered pur-  
6 suant to the Federal Insecticide, Fungicide, and  
7 Rodenticide Act; and all substances and chemicals  
8 subject to reporting obligations pursuant to the  
9 Emergency Planning and Community Right-to-Know  
10 Act.

11 (5) TOXIC CHEMICAL FACILITIES.—The term  
12 “toxic chemical facilities” includes all facilities in-  
13 cluding Federal facilities subject to a permit, inspec-  
14 tion or review, or registration requirement pursuant  
15 to the authority of the Solid Waste Disposal Act; the  
16 Clean Air Act; the Clean Water Act; the Federal In-  
17 secticide, Fungicide and Rodenticide Act; and the  
18 OSHA Hazard Communication Standard; as well as  
19 any facility subject to reporting obligations pursuant  
20 to the Emergency Planning and Community Right-  
21 to-Know Act.

22 **SEC. 102. IDENTIFICATION OF ENVIRONMENTAL HIGH IM-**  
23 **PACT AREAS.**

24 (a) DETERMINATION OF IMPACTED AREAS.—Within  
25 6 months after the date of enactment, the Administrator

1 of the Agency for Toxic Substances and Disease Registry,  
2 in consultation with the Environmental Protection Agen-  
3 cy, the National Institute for Environmental Health  
4 Sciences, the National Center for Health Statistics and  
5 the Bureau of the Census, shall determine the basis for  
6 designation of Environmental High Impact Areas, either  
7 counties or another appropriate geographic unit.

8 (b) PUBLICATION OF LIST.—Within 12 months of en-  
9 actment, the Administrator shall publish a list, in rank  
10 order, of the total weight of toxic chemicals present in  
11 each county or such appropriate geographic unit in the  
12 United States during the most recent five-year period for  
13 which data are available. The 100 counties or other appro-  
14 priate geographic unit with the highest total weight shall  
15 be designated as Environmental High Impact Areas.

16 (c) COMPILATION OF LIST.—In compiling the list  
17 under subsection (a), the Administrator shall—

18 (1) calculate with the best data available the  
19 total weight of toxic chemicals present in each coun-  
20 ty by multiplying the total volume of substances con-  
21 taining toxic chemicals (whether waste, process or  
22 other material) by the concentration of toxic chemi-  
23 cals contained in these substances;

1           (2) adjust the weights calculated under para-  
2 graph (1) to account for the relative toxicity of the  
3 toxic chemicals;

4           (3) determine, with the best available data, the  
5 actual and potential exposures, and toxicity of the  
6 toxic chemicals present in each impacted area;

7           (4) consider and utilize all appropriate data  
8 compiled pursuant to any environmental regulatory  
9 authority and other sources, including but not lim-  
10 ited to available data on lead-based paint and the ex-  
11 istence of pollutants from mobile sources; and

12           (5) distinguish between toxic chemicals which  
13 are (A) in a contained, controlled environment such  
14 as barrels, factories, warehouses, or lined landfills  
15 for any period of time during the 5-year period; and  
16 (B) released into the air, water, soil or groundwater  
17 of the area during the 5-year period as a result of  
18 authorized or unauthorized activities.

19       (d) METHODS.—Within 6 months after the enact-  
20 ment of this Act, the Administrator in consultation with  
21 the Agency for Toxic Substances and Disease Registry  
22 shall publish for public comment the methods to be used  
23 to calculate the total weight of toxic chemicals in waste,  
24 process, or other materials, including the assumptions to  
25 be used when the precise concentrations of toxic chemicals

1 are not known and the criteria used to account for relative  
2 toxicity, as required by subsection (b)(2).

3 (e) REVISION AND REPUBLICATION.—The Adminis-  
4 trator shall revise and republish the list described in sub-  
5 section (a) of this section not less than every 5 years,  
6 using data compiled for that 5-year period.

## 7 **TITLE II—ENFORCEMENT** 8 **INITIATIVES**

### 9 **SEC. 201. MANDATORY INSPECTIONS.**

10 To assure that facilities with the highest potential for  
11 release of toxic chemicals into the environment are operat-  
12 ing in compliance with all applicable environmental, health  
13 and safety standards, the Administrator, and the Assist-  
14 ant Secretary of the Occupational Safety and Health Ad-  
15 ministration shall conduct compliance inspections or re-  
16 views of all toxic chemical facilities in Environmental High  
17 Impact Areas subject to their respective jurisdictions with-  
18 in 2 years after the enactment of this Act, and not less  
19 than every 2 years thereafter.

## 20 **TITLE III—COMMUNITY** 21 **PARTICIPATION**

### 22 **SEC. 301. TECHNICAL ASSISTANCE GRANTS.**

23 Subject to such amounts as may be appropriated and  
24 in accordance with rules promulgated by the Secretary in  
25 consultation with the Administrator, the Secretary may

1 make grants available to any individual or group of indi-  
2 viduals who may be affected by a release or threatened  
3 release from any toxic chemical facility in an EHIA. Such  
4 grants shall—

5 (1) be designed to facilitate access by represent-  
6 atives of EHIAs to the public participation provi-  
7 sions of this Act and other law;

8 (2) be used to obtain technical assistance relat-  
9 ing to the inspection and review authorities listed in  
10 section 201 of this Act and the Secretarial study de-  
11 scribed in section 401 of this Act; and

12 (3) not exceed \$50,000 for a single grant recipi-  
13 ent.

14 Each grant recipient shall be required, as a condition of  
15 the grant, to contribute 20 percent of the total cost of  
16 the grant requested unless the grant recipient dem-  
17 onstrates financial need. Not more than one grant may  
18 be made with respect to each EHIA, but the grant may  
19 be renewed to facilitate public participation where nec-  
20 essary.

21 **SEC. 302. FUNDING.**

22 Within one year after the enactment of this Act, the  
23 Administrator shall promulgate regulations establishing a  
24 system of fees or assessments on toxic chemical facilities  
25 in EHIAs to substitute for appropriations as the funding



1 mechanism for the community grant program established  
2 in section 301. The fees or assessments shall take into  
3 account the volume adjustments provided in section  
4 102(c).

## 5 **TITLE IV—IDENTIFICATION AND** 6 **PREVENTION OF HEALTH IM-** 7 **PACTS**

### 8 **SEC. 401. SECRETARIAL STUDY.**

9       Within 24 months after the enactment of this Act,  
10 the Secretary, in consultation with the Administrator, the  
11 Secretary of the Department of Labor, the Bureau of In-  
12 dian Affairs, and the Commissioners of the United States  
13 Commission on Civil Rights, shall issue for public com-  
14 ment a report identifying the nature and extent, if any,  
15 of acute and chronic impacts on human health in EHIAs  
16 as compared to other counties. Such impacts shall include  
17 but not be limited to cancer, birth deformities, infant mor-  
18 tality rates, and respiratory diseases. The report shall be  
19 coordinated by the Administrator of the Agency for Toxic  
20 Substances Disease Registry, who shall work closely with  
21 the Directors of the National Institute for Environmental  
22 Health Sciences, the National Center for Health Statis-  
23 tics, and the Center for Disease Control, and shall seek  
24 to—

1           (1) isolate the impacts of environmental pollu-  
2       tion;

3           (2) segregate the effects of other factors such  
4       as health care availability or substance abuse or diet;

5           (3) rank the relative risks posed by the toxic  
6       chemicals present in EHIAs and by the varied  
7       sources of toxic chemicals, both individually and cu-  
8       mulatively;

9           (4) take into account the need to remedy the  
10      impacts of pollution in high population density  
11      areas;

12          (5) evaluate the levels below which release of  
13      toxic chemicals, either individually or cumulatively,  
14      must be reduced to avoid adverse impacts on human  
15      health; and

16          (6) determine the impacts of uncontrolled re-  
17      leases.

18   As a result of the report in communities where the Admin-  
19   istrator of the Agency for Toxic Substances Disease Reg-  
20   istry has determined that adverse health impacts exist, the  
21   agency shall also make this information readily available  
22   to members of the community by providing information  
23   directly to the affected communities and tribal govern-  
24   ments in the Environmental High Impact Areas about the

1 release of toxic chemicals and the potential effects of such  
2 exposure.

3 **SEC. 402. LEGISLATIVE RESPONSE.**

4 (a) REPORT.—If the report under section 401 identi-  
5 fies significant adverse impacts of environmental pollution  
6 on human health in EHIAs as a group, the President shall  
7 submit to Congress within one year after publication of  
8 the report, proposed legislation to remedy and prevent  
9 such impacts. Such legislation shall include—

10 (1) expansion of EPCRA to include additional  
11 facilities, additional chemicals, or reduced quantities  
12 of chemicals triggering reporting obligations;

13 (2) means to redress regulatory loopholes (such  
14 as recycling and industrial wastes exempt from regu-  
15 lation under subtitle C of the Solid Waste Disposal  
16 Act and wastes subject to lessened regulatory re-  
17 quirements); and

18 (3) measures such as taxes on uncontrolled or  
19 controlled emissions, or restrictions on toxic chemi-  
20 cal releasing activities within an EHIA to induce  
21 source reduction in EHIAs, regardless of whether  
22 facilities are in compliance with existing law.

23 (b) REPORT ON CHANGES AND RECOMMENDA-  
24 TIONS.—Within 2 years after publication of the report, the  
25 Administrator shall provide a report to the Congress which

1 identifies all of the changes made or recommended to be  
2 made to the Environmental Protection Agency's existing  
3 regulations, the purpose for each change and the goals to  
4 be achieved as a result of the substantive changes. The  
5 Administrator shall also advise Congress of the regulatory  
6 changes that were not made because of the presence of  
7 conflicting statutory mandates or the lack of statutory  
8 authority.

9 (c) PROPOSED LEGISLATION.—Within 3 years after  
10 publication of the health impact study, the President shall  
11 submit to Congress proposed legislation to remedy the  
12 problems of conflicting statutory mandates or the lack of  
13 statutory authority identified in the report to Congress  
14 pursuant to subsection (b).

15 **SEC. 403. MORATORIUM.**

16 If the report under section 401 finds significant ad-  
17 verse impacts of environmental pollution on human health  
18 in EHIAs, there shall be a moratorium on the siting or  
19 permitting of any new toxic chemical facility in any EHIA  
20 shown to emit toxic chemicals in quantities found to cause  
21 significant adverse impacts on human health. A new toxic  
22 chemical facility may be cited or permitted in such an  
23 EHIA during this period only if—

24 (1) the need for the activity is shown to the  
25 Secretary;

1           (2) the owner or operator of the facility dem-  
2       onstrates that the facility will develop a plan and  
3       maintain a comprehensive pollution prevention pro-  
4       gram; and

5           (3) the facility demonstrates that it will mini-  
6       mize uncontrolled releases into the environment.

7       The moratorium shall continue in effect in such an EHIA  
8       until the Administrator determines, upon petition of any  
9       interested party, that the health-based levels identified  
10      pursuant to section 401(5) have been attained at the  
11      EHIA.

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